



The City of Huron, Ohio  
417 Main St.  
Huron, OH 44839  
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Agenda for the special meeting of City Council  
**December 20, 2018 at 6:30p.m.**

- I. **Call to order** Moment of Silence followed by the Pledge of Allegiance to the Flag
- II. **Roll Call of City Council**
- III. **Approval of Minutes** N/A
- IV. **Audience Comments** Citizens may address their concerns to City Council. Please state your name and address for the recorded journal. (3 minute time limit)
- V. **Old Business**  
Ordinance 2018-41 An ordinance authorizing a purchase agreement with Liberty Development for a 3 acre portion of property located on the ConAgra property. (Tabled 12-11-18)
- VI. **City Manager's Discussion**
- VII. **Mayor's Discussion**
- VIII. **For the Good of the Order**
- IX. **Executive Session**
- X. **Adjournment**



**TO:** Mayor Hartung and City Council  
**FROM:** Andrew D. White, City Manager  
**RE:** Ordinance 2018-41  
**DATE:** December 7, 2018

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### **Subject Matter/Background**

In accordance with the November 27, 2018 presentation to city council, Dru Siley on behalf of Liberty Development has presented the city with a draft purchase agreement for a three acre portion of the ConAgra property. The previous presentations to city council on May 8, 2018, August 28, 2018 and November 27, 2018 have narrowed the development plan for ConAgra to a commercial/office complex, marine concierge facility, public parking area and future public park improvements. The phased development approach includes Liberty Development's commitment to pursue application to the United States Geological Survey's Request for Proposal to locate the USGS office and laboratory space currently located at NASA Plumbrook on the ConAgra parcel. USGS released the RFP on Friday, December 7. In an effort to expedite a responsive submission and in accordance with Liberty's presentation to council, Ordinance 2018-41 has been prepared for your consideration. The terms of the Purchase Agreement and accompanying Term Sheet are presented below with specific reference to previously discussed and/or approved by city council.

1. Property (§1): The subject parcel is identified as three acres of the southern portion of the ConAgra parcel (Parcel A as depicted on Exhibit A). Mr. Siley presented to City Council on May 8, 2018 to report the findings of the geotechnical and environmental studies that were conducted on the site during the period of the city's Master Services Agreement. Due to the requirement to stabilize the soil for development, the three acres of land previously identified for residential development has been relocated for the potential of commercial development.

2. Purchase Price (§2): Liberty will purchase the first three (3) acres of the development site from the City as follows:

- A. Two (2) acres in the southeast corner of the Site for \$1.00
- B. One (1) additional acre adjacent to the two acres listed above for \$60,000.00.

The purchase price for The \$60,000.00 cost represents the recoupment of the \$60,000.00 initial administration fee from the Master Services Agreement (Resolution 2017-57/2017-58 August 8, 2017). Upon execution of the Purchase Agreement, Liberty Development will deposit \$2,500.00 in escrow pending closing.

3. Title Examination/Survey/Title to Property (§§3-5): Prior to the closing of the sale the parties will secure an ALTA policy of title insurance, survey and general warranty deed.

4. Due Diligence Period (§§6-11). The establishment of a one hundred and eighty (180) day due diligence period establishes the initial authorization of the Purchase Agreement with Liberty as an option to purchase. During the first six months following execution the City and Liberty Development have several obligations. Purchaser must design and present its development plans to local boards for zoning and design approval. Liberty will commence construction of the proposed commercial developments (boat facility and office) within 180 days of closing. The additionally proposed office development, approximately 10,000 sf, may occur or concurrently with the approximately 24,000 sf boat facility or may occur at a later date. Liberty will undertake the necessary site stabilization for the initial three acres. The timing for the office component of the Development will depend on market conditions and the ability for Liberty and the City to secure the necessary tenant leases to make the office use viable.

During this period of time, it is anticipated that the city council will separately legislatively consider:

- A land swap agreement with the Ohio Department of Natural Resources
- The dedication of the public roadway accessing the property

The parties will additionally work together to establish the following items which also must be separately authorized by city council:

- The construction of necessary utility infrastructure; the City will design and install the necessary utilities to make the entire site development ready that include, water, sanitary sewer, storm sewer, gas, electrical service and data. The City will design and bid the improvements prior to Liberty closing on the property. The City will complete the installation of these improvements within 180 days of closing. Without this improvement, the site is not developable. The necessary site stabilization requires the installation of a sanitary sewer per OEPA guidelines.
- The terms of reimbursement for necessary site stabilization as it relates only to Parcel A
- The terms of design and construction of public park improvements

5. Closing/Terms of Sale (§§12-19) The Closing Date of the property will occur within thirty days following the expiration of the due diligence period. In general, the closing costs of the agreement are borne equally by both parties.

#### **Financial Review**

A total of \$147,500.00 was budgeted for in support of the activities outlined within the Master Services Agreement with Liberty Development. At present, \$94,000.00 has been expended leaving \$53,500.00 remaining in the budgeted line item. The Purchase Agreement anticipates the receipt of \$60,000.00 in reimbursement for the management fees from the Master Services Agreement. The cost allocation and financial strategy to be completed during the due diligence period will include evaluation of outside funding sources for the utility infrastructure, potential inter-governmental partnerships and public/private financing strategies such as tax increment financing.

#### **Legal Review**

The matter has been reviewed, follows normal legislative procedure and is properly before you. This follows the spirit of the terms of the Master Services Agreement previously approved and extended by motion on May 8, 2018. By authorizing the execution of the purchase agreement, the city will commit to utilize the next one hundred eighty days satisfying its obligations prior to closing. The individual variables within the city's obligations require separate legislative action and will be presented to council for their consideration.

#### **Recommendation**

If Council is in support of the request, a motion to adopt Ordinance 2018-41 is in order.

**ORDINANCE NO. 2018-41**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY OF HURON, TO EXECUTE A PURCHASE AGREEMENT WITH LIBERTY DEVELOPMENT COMPANY FOR A THREE (3) ACRE PORTION OF PARCEL NUMBER 42-61270.001 LOCATED ON THE FORMER CONAGRA PROPERTY.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HURON, OHIO:**

**SECTION 1.** That the City Manager be, and he hereby is, authorized and directed to authorized a purchase agreement with Liberty Development Company for a 3-acre portion of Parcel Number 42-61270.001 located on the former ConAgra property, which agreement shall be in substantially the form of Exhibit "A" attached hereto and made a part hereof.

**SECTION 2.** That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22

**SECTION 3.** This ordinance will take effect thirty (30) days following adoption.

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Brad Hartung, Mayor

Attest: \_\_\_\_\_  
Clerk of Council

Adopted: \_\_\_\_\_

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") dated as of September\_\_\_\_, 2018 is made by and between **LIBERTY DEVELOPMENT COMPANY**, an Ohio corporation, or its nominee, having an address at 28045 Ranney Parkway, Unit E, Westlake, Ohio, 44145 (the "Purchaser"), and the **CITY OF HURON, OHIO**, and Ohio municipality, having an address of 417 Main Street, Huron, Ohio, 44839(the "Seller"). The "Effective Date" of this Agreement shall be the date this Agreement is signed by Seller, if Seller is the last to sign, or by Purchaser, if Purchaser is the last to sign.

1. **THE PROPERTY.** Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, on the terms and conditions set forth herein, that certain real property located at and commonly known as a portion of **42 East Cleveland Road Huron, Ohio 44839** being more particularly described in or depicted on **Exhibit A** as Parcel A hereto and made a part hereof, and also described as a portion of tax parcel number 42-61270.001 consisting of 3.0 acres with all easements, rights, privileges and appurtenances thereunto belonging, including all right, title and interest of Seller in and to any land lying in the right-of-way of any street in front of or adjoining said real property to the centerline thereof (the "Land"), and all improvements, buildings and fixtures thereon (the "Improvements") (the Land and the Improvements are sometimes referred to herein collectively as the "Property").

2. **PURCHASE PRICE.** The purchase price of the Property for **Parcel A** shall be Sixty Thousand and 00/100 Dollars (\$60,000.00) (the "Purchase Price"). Purchase Price shall be paid as follows: (i) Purchaser shall deliver to the Escrow Agent (as hereinafter defined) an earnest money deposit of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) (and together with the additional deposit described in Section 6 (the "Earnest Money Deposit"), to be held in accordance with the provisions hereof; (ii) Purchaser shall deposit additional funds totaling, with the Earnest Money Deposit, Sixty Thousand and 00/100 Dollars (\$60,000.00)(the "Closing Purchase Price"), less credits authorized to Purchaser hereunder, in immediately available funds, in escrow with the Title Company (as hereinafter defined) on or prior to the Closing Date (as hereinafter defined). The Earnest Money Deposit shall be deposited in an interest-bearing account approved by Purchaser. All accrued interest thereon shall be paid to Purchaser or credited against the Purchase Price at Closing.

### 3. **TITLE EXAMINATION OF PROPERTY.**

(a) Purchaser, or its nominee, shall have the right to instruct NorthStar Title Insurance Company (the "Title Company") to issue a commitment for an ALTA Owner's Policy of Title Insurance (Form 2006) (the "Commitment"), in an amount equal to the Purchase Price, setting forth: (i) the state of title to the Property as of the effective date of the Commitment; (ii) the Title Company's requirements to delete the standard printed exceptions from the Title Policy; (iii) the results of a special tax and UCC search; and (iv) committing to issue any other endorsements required by Purchaser.

(b) Purchaser agrees to accept title to the Property subject only to general but not special real estate taxes which are a lien but not then due and payable on the Closing Date (the "Taxes"). Special assessments shall be paid in full by Seller at Closing. In the event the Commitment or the Survey (as hereinafter defined) discloses any matter affecting title to the Property other than Taxes, Purchaser shall notify Seller of the title or survey matters which Purchaser approves and the title or survey matters to which

Purchaser objects within sixty (60) days after receipt by Purchaser of the later of (i) the Commitment and (ii) the Survey, and Seller shall remove any such matters objected to by Purchaser, at Seller's expense, within thirty (30) days after Purchaser notifies Seller of such matters.

(c) In the event that Seller is unable or unwilling to remove any such title or survey matters objected to by Purchaser within said thirty (30) days, Purchaser shall have the right to elect either: (i) to waive such matter(s), proceed to close this transaction and accept title to the Property subject to such matter(s); or (ii) to terminate this Agreement by giving notice of termination to Seller and the Escrow Agent, in which event the Earnest Money Deposit and any other payments made to Seller hereunder shall be returned to Purchaser and this Agreement shall be of no further force or effect; or (iii) work to remove or clear such title matter(s). If Purchaser is unable to remove or clear such title or survey matter(s), Purchaser may continue to elect (i) or (ii) of this Section 3(c) and the Closing Date shall be extended accordingly.

(d) Notwithstanding any other provision of this Agreement to the contrary, Seller shall have the unconditional obligation to remove or cure, at no cost to Purchaser, any title matters which are a lien for the payment of money only, any encumbrance which can be removed by the payment of a definite sum of money, or any title matter which arose after the Effective Date as a result of the acts of Seller.

(e) It shall be a condition precedent to Purchaser's obligation to purchase the Property that the Title Company can and will, on the Closing Date, issue a fee owner's policy of title insurance (Form 2006) (the "Title Policy") to Purchaser in the amount of the Purchase Price, insuring that title to the Property is vested in Purchaser, free and clear from all liens and encumbrances, except for Taxes and other title matters approved by Purchaser as herein provided, and containing such endorsements as may be required by Purchaser, and without exception for claims of parties in possession not shown by public records, encroachments, overlaps, boundary line disputes or other matters described by the Survey which Purchaser has not approved or easements not shown by public records or other title matters ordinarily shown as standard permitted exceptions on Schedule B of a fee owner's policy of title insurance. On or before the Closing Date, Seller shall execute and deliver to the Title Company such documents or affidavits as are required by the Title Company to delete the standard printed exceptions from the Title Policy.

(f) At any time and from time to time, Purchaser may obtain an update to the Commitment or the Survey and shall have the right, within thirty (30) days after receipt of any such update, to notify Seller of any matter contained in such update to which Purchaser objects, in which event the rights of Purchaser set forth above in clauses (i), (ii) and (iii) of Section 3(c) shall again apply if Seller does not correct such matter within thirty (30) days after notice from Purchaser.

**4. SURVEY OF PROPERTY.** Purchaser may obtain, at Purchaser's expense, an ALTA/NSPS survey of the Property, which shall include the Table A items and certification requested by Purchaser (the "Survey"), and the perimeter legal description of the Land prepared and certified by the surveyor shall, if required by Purchaser, be used in the Deed (as hereinafter defined).

**5. TITLE TO PROPERTY.** Seller shall convey good and marketable indefeasible fee simple title to the Property to Purchaser, or its nominee, subject only to Taxes and such other title matters approved by Purchaser, by general warranty deed (the "Deed"), in form and substance reasonably satisfactory to Purchaser.

**6. ACCESS TO AND CONDITION OF PROPERTY; DUE DILIGENCE.**

(a) Purchaser, its agents, employees, contractors and engineers shall have the unlimited right to enter upon the Property (during normal business hours with at least twenty four hour notice to Seller) for the purpose of inspecting the physical condition of the Property, including, without limitation,

the mechanical, structural and electrical systems, roof, plumbing and HVAC, and for the purpose of performing surveys, soil tests, utility assessments and groundwater tests and test borings, to determine the suitability and feasibility of the Property for Purchaser's intended use thereof, such as the existence and adequacy of all utilities serving the Property, compliance with laws and the like. The right to conduct site investigations includes the right of Purchaser and Purchaser's employees, agents and contractors to enter upon any portion of the Property from time to time to take measurements, make inspections, make survey maps, and to conduct environmental and other studies required by Purchaser in its sole discretion. No such site investigation shall constitute a waiver or relinquishment on the part of Purchaser of its rights under any covenant, condition, representation, or warranty of Seller under this Agreement. Purchaser shall also have the right to pursue changes in the zoning of the Property, work on obtaining any and all necessary governmental approvals and permits, feasibility studies, determine marketability, negotiate leases, financing and the like for Purchaser's intended use of the Property.

(b) Subject to Section 6(c), Purchaser shall have One Hundred Eighty (180) days after the Effective Date to complete all such due diligence and feasibility investigations (the "Initial Due Diligence Period"). The Initial Due Diligence Period is established for the benefit of both parties and their abilities to satisfy the obligations herein. Purchaser shall be entitled to extend the period within which to complete such investigations provided the Purchaser continues to make commercially reasonable progress to bring a development project to fruition with an additional deposit into escrow of Two Thousand and No/100 Dollars (\$2,000.00) (the "Extended Due Diligence Period"), which shall be treated in the same manner as the Earnest Money deposit hereunder.

(c) In the event that during the Initial Due Diligence Period such due diligence and feasibility investigations reveal a condition or matter which is unacceptable to the Purchaser in any respect and in Purchaser's sole and absolute discretion, including, but not limited to, tenability or marketability of the Property, or its physical condition or properties, Purchaser shall be entitled to terminate this Agreement by written notice to Seller prior to the expiration of the Initial Due Diligence Period, and neither party shall have any further obligations hereunder. If Purchaser elects to terminate this Agreement prior to the expiration of the Initial Due Diligence Period, the Earnest Money Deposit and any interest thereon, shall be returned to Purchaser and neither party shall thereafter have any further liability to the other. In the event that the parties cannot reach a meeting of the minds on the separate agreements as outlined herein, Seller shall be permitted to terminate this Agreement during the Initial Due Diligence Period or if applicable on the Purchaser's request, the Extended Due Diligence Period.

(d) In the event that during the Extended Due Diligence Period such due diligence and feasibility investigations reveal a condition or matter which is unacceptable to the Purchaser related to governmental approvals or inability to construct Purchaser's intended use due to geological or its physical condition or properties, Purchaser shall be entitled to terminate this Agreement by written notice to Seller prior to the expiration of the Extended Due Diligence Period, and neither party shall have any further obligations hereunder. If Purchaser elects to terminate this Agreement prior to the expiration of the Extended Due Diligence Period, the Earnest Money Deposit and any interest thereon, shall be returned to Purchaser and neither party shall thereafter have any further liability to the other.

**7. INFORMATION AND DOCUMENTS.** No later than five (5) days after the Effective Date, Seller shall provide Purchaser with copies of, access to and the opportunity to inspect all leases, surveys, title policies, warranties, drawings, title documents, engineering and environmental test reports and analyses and any other documents or writings in any way pertaining to the Property in the possession or control of Seller.

**8. PLANS AND APPROVALS.** Purchaser shall have the right to file, at Purchaser's expense, any and all plans required in order to obtain building and/or demolition permits, and any rezoning, subdivision (or the vacation of any existing subdivision or consolidation plat) or any other application to obtain any approval, permit, license, certificate, exception, authorization or variance from any and all governmental authorities having jurisdiction over the Property, which Purchaser deems appropriate in connection with Purchaser's contemplated uses of the Property, including, without limitation, those pertaining to zoning, subdivision, use, building, erosion, environmental compliance, curb cuts, and utility connections and services. Seller agrees to join in the execution of any application required in order to obtain such permit or approval (or file such application individually if the relevant governmental authority shall so require). Seller further agrees to cooperate with Purchaser or its nominee in all respects, including without limitation, attending and giving favorable testimony at any hearings on the petitions or applications, meeting with, and providing information to, public and private utilities and governmental and quasi-governmental entities and otherwise working to obtain the agreements, assurances, approvals and permits required by Purchaser or its nominee.

**9. REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants to Purchaser that:

(a) Seller is the owner of good and marketable indefeasible fee simple title in and to the Property, free and clear of all liens and encumbrances, except real estate taxes not yet due and payable, and has the full power and authority to enter into this Agreement and convey the Property to Purchaser in accordance with the terms of this Agreement.

(b) Purchaser has been made aware of all environmental known factors of the site. To the best of Seller's knowledge there are no other oil or gas wells (capped or uncapped) or underground storage tanks (in use or abandoned) on or about the Property, and neither Seller nor any prior owner or occupant of the Property has: (i) caused or permitted, and Seller has received no notice and has no knowledge of, the generation, manufacture, refinement, transportation, treatment, storage, deposit, release, salvage, installation, removal, disposal, transfer, production, burning or processing of Hazardous Substances (as hereinafter defined) or other dangerous or toxic substances or solid wastes on, under or about the Property or any adjacent property; (ii) caused or permitted, and Seller has received no notice and has no knowledge of, the Release (as hereinafter defined) or existence of any Hazardous Substance on, under or affecting the Property or the adjacent property; (iii) caused or permitted, and Seller has received no notice and has no knowledge of, any substances or conditions on, under or affecting the Property which may support any claim or cause of action, whether by any governmental agency or any other person, under any applicable federal, state, or local law, rule, ordinance or regulation. For the purpose of this Agreement, the terms "Hazardous Substances" and "Release" shall have the same meaning as set forth the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 *et seq.*; provided, however, that the definition of Hazardous Substances shall also include petroleum and related by-products, hydrocarbons, radon, asbestos, urea formaldehyde and polychlorinated biphenyl compounds.

(c) Other than what has been previously disclosed to Purchaser, there are no written or oral leases in any way affecting the Property or the possession, use or control thereof, and no person or entity has any right with respect to all or any portion of the Property (whether by option to purchase, right of first refusal, contract, or otherwise) that would prevent or interfere with Purchaser taking title to, and possession of, all of the Property on the Closing Date; and Seller is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency that would limit or restrict Seller's right to enter into and carry out this Agreement. Neither the execution of this Agreement nor the consummation of the transactions contemplated herein will constitute a breach under any contract or agreement to which Seller is a party or by which Seller is bound or affected or which affects the Property or any part thereof. There are no written or oral service contracts in any way affecting the Property.

(d) Seller has not received any notice of, and to the best of its knowledge, there are no (i) proposed special assessments, condemnation, or changes in the roads adjacent to the Property; (ii) pending public improvements which will result in any charge being levied or assessed against, or a lien being created upon, the Property; or (iii) pending or threatened eminent domain or condemnation proceedings against or involving the Property or any adjacent parcel.

(e) There is no litigation, proceeding or action pending or threatened against or relating to Seller or the Property or which questions the validity of this Agreement or any action taken or to be taken by Seller pursuant hereto.

(f) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation of, be in conflict with or constitute a default under any term or provision of any agreement, instrument or lease to which Seller is a party.

(g) No notices or citations for the violation of any zoning, building or other law, ordinance, regulation or directive of any governmental authority or authorities having jurisdiction relating to the Property or any part or parts thereof, have been received, or are known by, Seller.

(h) Seller is not in default under any applicable federal, state or local laws, statutes, ordinances, permits, licenses, orders, approvals, variances, rules or regulations or judicial or administrative decisions which would have an adverse effect upon the Property.

(i) Each person executing and delivering this Agreement and all documents to be executed and delivered by Seller at the Closing represents and warrants to Purchaser that he or she has due and proper authority to execute and deliver the same. Seller has the full right, power and authority to sell and convey the Property to Purchaser as provided herein and to carry out its obligations hereunder.

Seller shall fully disclose to Purchaser, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware after the Effective Date which may affect the representations and warranties set forth above. The warranties and representations of Seller contained herein shall be deemed renewed at Closing and shall survive the Closing and the recording of the Deed.

**10. SELLER'S COVENANTS.** Seller shall not enter into or consent to any lien, easement, restriction, governmental improvement or other matter affecting Seller's title to the Property or the permitted use of the Property, or that may result in the imposition of any assessment against the Property or any part thereof, nor shall Seller enter into any lease, service contract or other agreement with respect to the Property or the possession, use or control thereof, without first obtaining the prior written consent of Purchaser, which Purchaser may withhold, in its sole discretion. Seller shall maintain, repair and keep the Property in its present condition. Seller shall not remove, plant or add any soil, trees, plants or improvements or make any other alterations to the Property from and after the Effective Date, other than normal day-to-day maintenance and repairs, which Seller covenants it shall perform. Seller will maintain and insure the existing structure(s) on the Property, if any, for the full replacement value through the Closing Date. Seller shall comply with all laws, ordinances and regulations of any governmental authority having jurisdiction over the Property.

**11. CONDITIONS TO PURCHASER'S OBLIGATIONS.**

(a) The obligation of Purchaser to consummate the transaction contemplated by this Agreement is conditioned upon the fulfillment of each of the following conditions as of the Closing Date (all or any portion of which may be waived in whole or in part by Purchaser at or prior to Closing):

(i) Seller shall have performed, observed, and complied with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by Seller prior to or as of the Closing Date as and when required;

(ii) All of the representations and warranties made by Seller and set forth in this Agreement shall be true and correct as of the Effective Date and as of the Closing Date;

(iii) Purchaser shall have completed its due diligence and feasibility review and assessment of the Property, which shall have been satisfactory to Purchaser in all respects;

(iv) Purchaser shall have determined that utility service will be available to the Property at a reasonably commercial cost to Purchaser. The Seller shall agree via separate agreement to all infrastructure improvements generally depicted on Exhibit B necessary for the development of Parcel A and such improvements include but are not limited all necessary utilities (water, storm sewer, sanitary sewer, electricity, data), sidewalks, access roads, publicly accessible parking and site work related to the listed improvements. Said separate agreement may include the acquisition of grants, loans, or separate public finance tools to establish the necessary utility infrastructure;

(v) The Property shall be unencumbered by any leases or other claim of possessory rights as of the Closing Date, except as may be approved by Purchaser. Seller will complete and record the plat for the exchange of the parcels, as generally depicted on Exhibit C, previously agreed to by City Council and the Ohio Department of Natural Resources. This includes the dedication of the existing access road into the site as public right-of-way;

(vi) The Property shall be approved by the Seller and the Seller's Boards and Commissions for the uses proposed for the site;

(vii) The Seller shall agree via separate agreement to reimburse the Purchaser for costs associated with the soil stabilizations necessary to develop Parcel A.;

(viii) The City of Huron shall commit via separate agreement to commence construction the public park improvements generally depicted on Exhibit D within 24 months the Purchaser commencing construction on Parcel A;

(vii) The Title Company shall be prepared to issue the Title Policy.

(b) If, as of the Closing Date, any of the conditions of Section 11(a) hereof are not fulfilled, in whole or in part, or if at any time prior to the Closing Date Purchaser determines, in its

reasonable judgment, that any of the conditions set forth in Section 11(a) hereof cannot be fulfilled, in whole or in part, on or before the Closing Date, Purchaser, at its sole option, shall have the right, exercisable by notice to Seller:

(i) To waive such condition and proceed to close this transaction,

(ii) To terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and the parties hereto shall thereafter be released from any and all obligations under the terms of this Agreement, or

(iii) To extend the time for closing hereunder until all of the conditions in Section 11(a) above are satisfied. If Purchaser elects to proceed pursuant to clause (iii) of this Section 11(b), Purchaser may still, in its sole discretion, elect clause (i) or (ii) subsequently, at any time, upon written notice to Seller, for so long as any of the conditions set forth in Section 11(a) above are not satisfied.

(c) If the purchase and sale contemplated herein is not consummated because of the inability, failure or refusal, for whatever reason whatsoever of Seller to convey the Property in accordance with the terms and conditions provided herein or because of the default by Seller in the performance of any of its obligations set forth in this Agreement, Purchaser shall be entitled, in its sole discretion, to elect (i) to terminate this Agreement by written notice to Seller, in which event the Earnest Money Deposit and all monies paid to Seller or deposited in escrow by Purchaser pursuant to this Agreement shall be promptly returned to Purchaser, and Purchaser shall be entitled to pursue any remedies available at law or in equity for such breach, and/or (ii) to enforce specific performance of Seller's obligations hereunder and any other remedies available at law or in equity for such breach.

(d) Notwithstanding any provisions of this Agreement to the contrary, if Seller performs all of its obligations hereunder and Purchaser fails to close this transaction for reasons other than Seller's default or the failure of any of the conditions set forth in Section 11(a), this Agreement shall terminate and the Earnest Money Deposit and any additional deposit for extensions of the due diligence period shall be delivered to Seller as agreed upon liquidated damages as Seller's exclusive remedy, it being agreed that the amount of the Earnest Money Deposit is a reasonable forecast of just compensation for the loss that would be caused by Purchaser's breach and that the loss that would be caused by such breach is one that is incapable of ascertainment or very difficult to ascertain.

## **12. CLOSING.**

(a) The closing of the transaction contemplated by this Agreement (the "Closing") shall occur within Thirty (30) days after the expiration of the Due Diligence Period. The Title Company shall act as escrow agent ("Escrow Agent") for the closing of this transaction. This Agreement shall serve as escrow instructions to the Title Company. If any of the terms of this Agreement are inconsistent with the Title Company's standard conditions of acceptance, the terms of this Agreement shall control. The Title Company is hereby designated as the real estate reporting person in connection with this transaction for

information reporting to the Internal Revenue Service in accordance with Section 6045 of the Internal Revenue Code of 1986, as amended (the "Code"). The parties shall provide all information required by the Title Company to fulfill its reporting obligations hereunder and to report proceeds from this transaction on a Form 1099-S including the obligation of the Seller to provide a FIRPTA affidavit required by Section 1445 of the Code.

(b) Seller and Purchaser, or its nominee, shall deposit their respective documents, and Purchaser, or its nominee, shall deposit the balance of the Closing Purchase Price with the Title Company on or before the Closing Date. The balance of the Purchase Price on a per lot basis shall be paid to the Seller as a part of the closing of the sale of lots.

(c) At Closing, Seller shall pay: (i) the transfer taxes and conveyance fees required to be paid in connection with the transfer of the Property to Purchaser; (ii) the cost of the title examination, the Commitment and one half (1/2) the cost of the Title Policy in the amount of the Purchase Price; (iii) one-half (1/2) of the Title Company's fees, if any, for its services as Escrow Agent hereunder; (iv) all special assessments, if any, including all future installments; and (v) any other charges or prorations of Seller as required herein. At Closing, Purchaser, or its nominee, shall pay: (i) the cost of recording the Deed; (ii) one-half (1/2) of the Title Company's fees, if any, for its services as Escrow Agent hereunder; (iii) the special tax and UCC searches, if requested; (iv) one half (1/2) the cost of the Title Policy in the amount of the Purchase Price; and (v) any other charges or prorations of Purchaser as required herein.

(d) At Closing, the Title Company shall: (i) deliver the Deed to Purchaser, or its nominee, by filing the Deed for record in the public records in which the Property is located, (ii) pay to Seller the Purchase Price less any credits to which Purchaser is entitled, (iii) issue the Title Policy, and (iv) charge Seller and Purchaser, or its nominee, for other respective costs.

(e) Seller shall be responsible for and shall pay all utility charges (including, without limitation, water, sewer, gas, and electric) incurred at the Property to the close of business on the Closing Date.

**13. CONDEMNATION AND EMINENT DOMAIN.** If the Property is subjected to a taking, either total or partial, by eminent domain for any public or quasi-public use, or if notice of intent of a taking or a sale in lieu of taking is received by Seller or Purchaser, Purchaser shall have the right, at its sole option, exercisable by notice to Seller, to either (a) proceed to close this transaction, in which event Purchaser shall be entitled to participate in any such condemnation or eminent domain proceedings and to receive all of the proceeds attributable to any portion of the Property to be conveyed to Purchaser, or (b) terminate this Agreement, in which event all funds and documents shall be returned to the depositing party; the Earnest Money Deposit shall be returned to Purchaser; Purchaser shall pay the costs and expenses of this transaction chargeable to them; and Seller and Purchaser shall have no further rights or obligations hereunder.

**14. TAXES.** All general taxes shall be prorated and adjusted between Seller and Purchaser as of the Closing Date, with Seller charged for the Closing Date and the days prior thereto, on the basis of the last officially certified and available tax duplicate for the Property. In the event the Property is not separately assessed as a separate tax parcel as of Closing because the Property is part of a larger parcel of real property which is a separate tax parcel, taxes shall be prorated on the basis of the last officially certified and available tax duplicate for such larger tax parcel in proportion to the number of acres comprising the Property in relation to the acres comprising the larger tax parcel. If the actual real estate taxes paid by Purchaser in respect of the period of the proration exceed the credit given Purchaser at Closing for such taxes, Seller shall, upon presentation of appropriate paid tax bills, promptly reimburse Purchaser for any amounts incurred by Purchaser for such taxes in excess of the prorated credit. Seller's obligation to reimburse Purchaser under this Section 14 shall survive the Closing and the recording of the Deed.

**15. POSSESSION.** Exclusive possession of the Property shall be delivered by Seller to Purchaser on the Closing Date. Seller shall be obligated to maintain property and liability insurance for the Property until delivering possession to Purchaser. If there is a fire or other casualty affecting the Property prior to the Closing Date, then, Purchaser may, at its sole option: (a) receive the proceeds of any insurance payable in connection with such damage or destruction (plus any deductible) and thereupon remain obligated to perform this Agreement; or (b) terminate this Agreement and receive any funds previously paid or deposited with the Escrow Agent. The aforesaid option shall be exercised by Purchaser by written notice to Seller within THIRTY (30) days after Purchaser's receipt of notice of such damage or destruction from Seller. Upon termination of this Agreement by Purchaser pursuant to this Section, Purchaser shall be entitled to the return of its Earnest Money Deposit and neither party shall thereafter be under any further liability to the other. The terms and conditions of this Section 15, will survive closing until Possession by Purchaser.

**16. NOTICES.** All notices, requests and other communications under this Agreement shall be in writing and shall be deemed given when made by personal delivery, sent by nationally recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below, and notice shall be deemed given on the date on which the notice is received by a party, in the case of personal delivery, on the date on which it is deposited with a nationally recognized overnight courier, or the date on which it is deposited in the U.S. Mail in the case of mail:

To Seller: City of Huron  
Attn: Andrew White, City Manager  
417 Main Street  
Huron, OH 44839

City of Huron  
Attn: Laura Alkire, Law Director  
417 Main Street  
Huron, OH 44839

To Purchaser: Mr. Thomas J. Kuluris  
Liberty Development Company  
28045 Ranney Parkway, Unit E  
Westlake, OH 44145

When a date specified herein falls upon a Saturday, Sunday, National holiday or State of Ohio holiday, the following Monday or the day after such holiday (that is not a Saturday, Sunday, National holiday or State of Ohio holiday) shall be used for purposes of this Agreement.

**17. MECHANIC'S LIEN.** Seller represents that no construction work has been performed on the Property or materials supplied for the Property within ninety (90) days of the date hereof for which a mechanic's lien could be filed. Seller agrees to hold Purchaser harmless against any costs, damages and expenses incurred by Purchaser, including reasonable attorneys' fees, as a result of the filing against the Property of any mechanic's lien by any person, firm, corporation or other entity claiming to have performed work on the Property or supplied materials for the Property prior to the Closing Date pursuant to authorization from Seller or Seller's agents. Purchaser agrees to give Seller notice of any such liens promptly after obtaining knowledge thereof. If any such liens are not discharged of record within SIXTY (60) days after the receipt by Seller of such notice, Purchaser shall have the right to pay the full amount of any such liens to the lien claimants, and Seller shall reimburse Purchaser for any such payments within

FIFTEEN (15) days after receiving from Purchaser copies of receipts for such payments. Seller's obligations under this Section 17 shall survive the Closing and the recording of the Deed.

**18. MISCELLANEOUS.** This Agreement constitutes the entire agreement between Seller and Purchaser regarding the sale and purchase of the Property, and shall be binding upon, and inure to the benefit of Seller and Seller's successors and permitted assigns, and of Purchaser and its successors and assigns. This Agreement shall not be assigned by Seller without the prior written consent of Purchaser, but may be assigned by Purchaser without the consent of Seller so long as the assignee is an affiliated person or entity with common control of assignor; otherwise an assignment will require Seller's prior written approval. This Agreement shall be governed by State of Ohio law. No provision of this Agreement shall be construed by any court or other judicial authority against any party hereto by reason of such party's being deemed to have drafted or structured such provision. The parties agree that each of the covenants, representations and warranties set forth in this Agreement shall survive the Closing and the delivery of the Deed. This Agreement may be executed in counterparts and all such counterparts shall constitute one agreement binding on all the parties, notwithstanding that all the parties are not signatories to the same counterpart. This Agreement may not be amended, modified or altered except by a writing signed by both parties.

**19. EXPIRATION OF OFFER.** When this Agreement is signed by Purchaser, it shall be deemed to be an offer of Purchaser to purchase the Property from Seller upon the terms and conditions set forth herein. This offer of Purchaser, unless extended by Purchaser in a written notice delivered to Seller, shall expire at 5 p.m. (E.S.T.) on the date that is SEVEN (7) days after that date that Purchaser delivers to Seller not less than two (2) originals of this Agreement duly and fully executed by Purchaser. If Seller accepts this offer of Purchaser, Seller shall place on the first page of this Agreement the date of execution by Seller and promptly return one (1) fully executed original of this Agreement to Purchaser. If Seller fails to accept and notify Purchaser of Seller's acceptance of this offer within the time frame set forth above, then Purchaser's offer shall be deemed withdrawn and shall be deemed null and void

[Signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed to be effective as of the date first set forth above, but this Agreement was signed on the respective dates specified below.

**SELLER:**

CITY OF HURON, an Ohio municipality,

By: \_\_\_\_\_  
Andrew White, City Manager

Dated: \_\_\_\_\_, 2018

**PURCHASER:**

LIBERTY DEVELOPMENT COMPANY, an  
Ohio Corporation

By: \_\_\_\_\_

Thomas J. Kuluris, President

Dated: \_\_\_\_\_, 2018

**Exhibit A**  
**Development Parcel A**



**Exhibit B  
Public Utilities**





